

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

EDMIN ALICEA,

Plaintiff,

-against-

THE CITY OF NEW YORK,
POLICE OFFICER ALEJANDRO RIVAS (TAX 925987),
DETECTIVE RICHARD BABOOLAL (TAX 924906), and
POLICE SERGEANT FREDY CRUZ (TAX 915528),

Defendants.

Case Number: 13 CV 7073 (JGK) (GWG)

-----X

26 Court Street
Brooklyn, New York

August 20, 2014
10:21 a.m.

EXAMINATION BEFORE TRIAL of Defendant
SERGEANT FREDY CRUZ, taken by the Plaintiff, held at
the above time and place, before Joseph Adler, a
Stenotype Reporter and Notary Public of the State of
New York, pursuant to Notice and stipulations
between counsel.

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A P P E A R A N C E S:

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BY: BRIAN J. FARRAR, ESQ.

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STIPULATIONS

IT IS HEREBY STIPULATED AND AGREED, by and between the attorneys for the respective parties herein, that the sealing and filing of the within deposition be waived.

IT IS FURTHER STIPULATED AND AGREED that such deposition may be signed and sworn to before any officer authorized to administer an oath, with the same force and effect as if signed and sworn before the officer before whom said deposition is taken.

IT IS FURTHER STIPULATED AND AGREED that all objections, except as to the form are reserved to the time of the trial.

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2 S E R G E A N T F R E D Y C R U Z, called as a
3 witness, having first been duly sworn by the Notary
4 Public (Joseph Adler), was examined and testified as
5 follows:

6 EXAMINATION BY

7 MS. MASSIMI:

8 Q Good morning, Sergeant.

9 A Good morning.

10 Q Could you do me a favor and just state
11 your name for the record?

12 A Name is Sergeant Cruz, C-R-U-Z, Fredy
13 first name, F-R-E-D-Y.

14 Q. What is your work address?

15 A. 1 Police Plaza, New York, New York 10038.

16 Q My name is Jessica Massimi. I am an
17 attorney, and I represent Edmin Alicea, the
18 plaintiff in this case. I am going to be asking you
19 some questions today about an incident that began on
20 March 27 of 2012. Do you understand that you have
21 taken an oath to tell the truth here today?

22 A Yes.

23 Q Do you understand that that is the same
24 oath that you take when you go to court?

25 A Yes.

1 CRUZ

2 MR. FARRAR: Objection.

3 A No.

4 Q Are you currently being sued in any other
5 lawsuits for civil rights violations?

6 MR. FARRAR: Objection.

7 A No.

8 Q As a member of the NYPD, are you trained
9 with regard to making observations?

10 MR. FARRAR: Objection.

11 A Yes.

12 Q Would you agree that it is important to
13 make observations?

14 MR. FARRAR: Objection.

15 A Yes.

16 Q Would you say, agree that it is important
17 to record your observations?

18 MR. FARRAR: Objection.

19 A Yes.

20 Q Would you agree that it is important to
21 record your observations truthfully?

22 MR. FARRAR: Objection.

23 A Yes.

24 Q Would you agree that it is important to
25 record your observations completely?

1 CRUZ

2 MR. FARRAR: Objection.

3 A Yes.

4 Q Do you agree that it is important to
5 record your observations truthfully and completely
6 because the record of what you observed will be used
7 in a legal proceeding?

8 MR. FARRAR: Objection.

9 A Yes.

10 Q Do you agree that it is important to tell
11 the truth?

12 A Yes.

13 Q Would you agree that you have a duty to
14 make and record observations while you are on duty
15 in the discharge of your job responsibilities?

16 MR. FARRAR: Objection.

17 A Yes.

18 Q Why is it important to tell the truth?

19 MR. FARRAR: Objection.

20 A If someone committed -- if someone
21 committed a crime and you saw it, yeah, it's very
22 important to -- to say the truth.

23 Q Why is that?

24 MR. FARRAR: Objection.

25 A That's the oath that you took in -- in

1 CRUZ

2 this job.

3 Q Have you ever heard the term probable
4 cause before?

5 A Yes.

6 Q What does that term mean?

7 MR. FARRAR: Objection.

8 A It means that there's a -- a high
9 probability that yes, whatever crime took place or
10 violation did take place, and it's the level of --
11 how can I say? It's the level of -- it pretty much
12 tells you that in order to make the arrest, you need
13 that probable cause, and once you reach that, then
14 you're able to make that arrest.

15 Q Can you define the term probable cause
16 without using the term probable cause?

17 MR. FARRAR: Objection.

18 A No.

19 Q Have you now told me everything you know
20 about probable cause?

21 MR. FARRAR: Objection.

22 A Yes.

23 Q What circumstances must be present in
24 order for a member of the NYPD to arrest someone
25 without a warrant?

1 CRUZ

2 MR. FARRAR: Objection.

3 A Without a warrant?

4 Q Yes.

5 A They need to see the crime taking place,
6 if there is any evidence involving that crime.

7 Q Is that everything?

8 A A complaint. You need a complaint also,
9 someone making a complaint, yeah.

10 Q Is that everything?

11 A Yeah.

12 MR. FARRAR: Objection.

13 Q Did you understand that Mr. Alicea had
14 committed a crime on March 27, 2012?

15 A Yes.

16 Q What information did you have that led you
17 to believe that?

18 A What information?

19 Q Yes.

20 A He was observed purchasing narcotics. He
21 was observed eating, swallowing a narcotic.

22 Q How do you know that he was observed
23 purchasing narcotics?

24 A From the officer who made the observation.

25 Q Who was the officer that made that

1 CRUZ

2 observation?

3 A Officer Baboolal.

4 Q What did Officer Baboolal tell you with
5 regard to those allegations?

6 A That he was observed purchasing narcotics.

7 Q What details did Officer Baboolal provide
8 to you with regard to those allegations?

9 A That he saw the individual purchasing
10 marijuana.

11 Q Did Officer Baboolal tell you how much
12 money was exchanged?

13 A No.

14 Q Did Officer Baboolal tell you if any money
15 was exchanged?

16 A Yes.

17 Q Did he tell you how much money was
18 exchanged?

19 A No.

20 Q Did you ask him how much money was
21 exchanged?

22 A No.

23 Q Why not?

24 A I -- he -- you would have to ask him how
25 much money.

1 CRUZ

2 Q I am going to ask him that, but I am just
3 asking, the question is why didn't you ask him how
4 much money was exchanged?

5 A He sees the money, money being exchanged
6 to the -- to the seller. How much was it, I don't
7 know. You would have to ask him.

8 Q When did Officer Baboolal first contact
9 you about this alleged purchase and sale?

10 A That same day.

11 Q When though? Was it while he was at the
12 scene of the arrest, or was it hours later, or
13 something else?

14 A No. It was on that day, that afternoon.

15 Q Did he contact you by radio?

16 A I communicated with him to make sure of
17 what he observed, and I'm not sure how it was, by
18 radio or by phone, but I did communicate with him.

19 Q How did you communicate with him?

20 MR. FARRAR: Objection.

21 A I'm not sure.

22 Q When did you first communicate with him
23 regarding this arrest or this incident?

24 A As soon as the individual was brought to
25 the precinct.

1 CRUZ

2 Q The first time you communicated with
3 Officer Baboolal about his observation was when
4 Mr. Alicea was already at the precinct?

5 A Right.

6 Q Did Officer Baboolal ever provide you with
7 a description of this alleged seller?

8 MR. FARRAR: Objection.

9 A I can't remember.

10 Q If Officer Baboolal had provided you with
11 a description of this alleged seller, would you have
12 recorded the description somewhere?

13 MR. FARRAR: Objection.

14 A No.

15 Q Why not?

16 A Unless he's -- unless we know the seller,
17 because a lot of times we do know the seller, you
18 know -- you know, we'll -- we'll make a -- you know,
19 we'll keep a mental note on the seller because a lot
20 of times -- a lot of them we don't know. And just
21 for future reference, we may make an arrest later on
22 if we know the individual. Yeah, and that's it.

23 Q When you say you keep a mental note of
24 that information, what do you mean?

25 MR. FARRAR: Objection.

1 CRUZ

2 A Meaning if we do see him -- if we do see
3 him out in the street in that location, you know,
4 we'll see if we could make an observation point and
5 just see if he is selling or not.

6 Q What do you mean by observation point?

7 A We'll set up to see if he's selling.
8 We'll have someone at a -- at a location observing
9 the individual to see if he is selling narcotics.

10 Q If you do not write down the seller's
11 description anywhere and you do not arrest him, when
12 you observe the sale taking place, what steps need
13 to be taken in order to ensure that you are
14 arresting the correct person at a later date?

15 MR. FARRAR: Objection.

16 A I don't know. You would have to ask the
17 observing officer if he's taking notes of the
18 individual selling.

19 Q How much time can pass from when the sale
20 is observed to when it is no longer proper to arrest
21 the person for that sale?

22 MR. FARRAR: Objection.

23 A There is no time.

24 Q You can arrest that person at any point in
25 the future?

1 CRUZ

2 MR. FARRAR: Objection.

3 A If we -- if we identify the individual.

4 Q You stated earlier that you were informed
5 that Edmin Alicea was observed swallowing narcotics?

6 A Yes. Through Officer Rivas.

7 Q When did Officer Rivas first inform you
8 that he had observed that?

9 A When he had spoken with me.

10 Q When was that?

11 A When I was at the precinct, he had called
12 me.

13 Q How did he call you?

14 A I don't remember.

15 Q Was it on a cell phone?

16 A I don't remember.

17 Q Was it on a radio?

18 MR. FARRAR: Objection.

19 A Yeah, I don't -- he communicated with me.

20 Q What did Officer Rivas tell you during
21 that communication?

22 A That the individual swallowed one bag of
23 marijuana.

24 Q Did Officer Rivas describe the bag to you?

25 A He just said one bag of marijuana.

1 CRUZ

2 Q Did Officer Rivas tell you if Mr. Alicea
3 had resisted arrest?

4 A I don't remember that.

5 Q Did Officer Rivas tell you if Mr. Alicea
6 had struggled with them at all?

7 A I am sorry?

8 Q Did Officer Rivas tell you during that
9 initial conversation if Mr. Alicea struggled with
10 him at all?

11 A No. I don't remember.

12 Q Other than Officers Baboolal and Officer
13 Rivas, did anyone else inform you that they believed
14 Mr. Alicea had engaged in any illegal activity?

15 A No.

16 Q Who was working with Officer Rivas on that
17 day when he arrested Mr. Alicea?

18 MR. FARRAR: Objection.

19 A I can't say.

20 Q Would you agree that sometimes prisoners
21 are injured during the course of an arrest?

22 MR. FARRAR: Objection.

23 A Can you repeat the question again?

24 Q Would you agree that sometimes prisoners
25 are injured during the course of an arrest?

1 CRUZ

2 A Yes.

3 Q Has a prisoner ever been injured while you
4 have been arresting him or her?

5 MR. FARRAR: Objection.

6 A No.

7 Q Would you agree that a member of service
8 who takes custody of an arrested person should
9 closely monitor him for any apparent injuries?

10 MR. FARRAR: Objection.

11 A Yes.

12 Q Earlier you stated that as a supervising
13 sergeant, you would be one individual who would be
14 required to make a record of those types of
15 injuries?

16 MR. FARRAR: Objection.

17 A If they are visible injuries, yes.

18 Q You would be one person that is required
19 to make a record of those injuries?

20 MR. FARRAR: Objection.

21 A To make a record? No. The officer.

22 Q The arresting officer?

23 A The arresting officer.

24 Q Would anyone else be required to make a
25 record of those injuries?

1 CRUZ

2 A No.

3 Q Are you required to protect arrestees from
4 physical injury after he or she has been taken into
5 custody?

6 MR. FARRAR: Objection.

7 A Yes.

8 Q What are the procedures for doing that?

9 MR. FARRAR: Objection.

10 A To protect them?

11 Q Yes.

12 A Make sure that the individual who is now
13 in our custody, you know, is -- doesn't hurt
14 himself. You know, if he did receive some sort of
15 injury, make sure that -- physical injury, make sure
16 that he gets the medical attention he's required
17 for.

18 Q Do you have an obligation to ensure that
19 that happens as a supervising sergeant?

20 MR. FARRAR: Objection.

21 A For the person to receive medical
22 attention?

23 Q If you observe that they are physically
24 injured.

25 A Yes.

1 CRUZ

2 Q Are members of the NYPD required to make
3 medical assistance available to prisoners who are
4 injured?

5 MR. FARRAR: Objection.

6 A If -- if they're actually injured, yes.

7 Q Are members of the NYPD required to make
8 medical assistance available to prisoners who claim
9 they are injured?

10 MR. FARRAR: Objection.

11 A Who claim they're injured?

12 Q Yes.

13 A Yes.

14 Q Would you agree that the deliberate use of
15 excessive force is a violation of a person's
16 constitutional rights?

17 MR. FARRAR: Objection.

18 A Yes.

19 Q Are you trained to avoid excessive force?

20 MR. FARRAR: Objection.

21 A Yes.

22 Q Do you ever provide training to the
23 officers that you supervise regarding the use of
24 excessive force?

25 A No, I don't train.

1 CRUZ

2 Q Do you ever provide any on-the-job
3 instruction for those officers regarding the use of
4 excessive force?

5 MR. FARRAR: Objection.

6 A No.

7 Q Do your officers ever ask you for guidance
8 regarding the appropriate use of force?

9 A No. We receive memos from the department
10 advising us of -- of the use of physical force.

11 Q What are those memos called?

12 MR. FARRAR: Objection.

13 A Department memos.

14 Q How often do you receive those memos?

15 MR. FARRAR: Objection.

16 A Every so often.

17 Q Like monthly?

18 A I can't say.

19 Q When did you most recently receive a memo
20 regarding the use of excessive force?

21 MR. FARRAR: Objection.

22 A I can't say, but every once in a while, we
23 get them.

24 Q What do you do with those memos once you
25 receive them?

1 CRUZ

2 MR. FARRAR: Objection.

3 A We read them.

4 Q Then you throw them away?

5 MR. FARRAR: Objection.

6 A No. They're -- they're kept in the
7 database also.

8 Q They are kept digitally you mean?

9 A Yeah, digitally.

10 Q Do you receive a hard copy?

11 MR. FARRAR: Objection.

12 A Yes.

13 Q If you need to retrieve a copy of it from
14 the database, are you able to do that?

15 MR. FARRAR: Objection.

16 A Yes.

17 Q Are these sections of the patrol guide, or
18 is it something else?

19 MR. FARRAR: Objection.

20 A Just memos that are received.

21 Q It is not necessarily updates to the
22 patrol guide, it is something else?

23 A Right.

24 Q Who is responsible for maintaining those
25 memos in the database?

1 CRUZ

2 MR. FARRAR: Objection.

3 A I don't know.

4 Q Do officers that you are supervising ever
5 ask you to explain or clarify these memos?

6 MR. FARRAR: Objection.

7 A No.

8 Q If an officer had a question about the use
9 of excessive force or the propriety of a particular
10 action, who would they go to for guidance?

11 MR. FARRAR: Objection.

12 A A lot of times when we have legal
13 questions, we'll call the legal department.

14 Q Who would you contact at the legal
15 department?

16 MR. FARRAR: Objection.

17 A I don't have the name.

18 Q If it is not a legal question and it is
19 just a question about the propriety of whether or
20 not to get a prisoner medical assistance for
21 instance, who would that officer go to for guidance?

22 MR. FARRAR: Objection.

23 A For medical assistance?

24 Q As an example, if an officer had a
25 question about how to proceed with a particular

1 CRUZ

2 activity or action, who would they go to for
3 guidance?

4 MR. FARRAR: Objection.

5 A They would go to their supervisor.

6 Q Who is their supervisor?

7 MR. FARRAR: Objection.

8 A Who are we talking here?

9 Q Let us say Officer Rivas for instance.

10 Who supervised Officer Rivas on March 27, 2012?

11 A Myself.

12 Q Why were you his supervisor?

13 MR. FARRAR: Objection.

14 A Because I was at work, and he's -- I'm his
15 supervisor.

16 Q What is the chain of command on a given
17 day at the 33rd Precinct in terms of ranks?

18 MR. FARRAR: Objection.

19 A What do you mean by that?

20 Q Just list the ranks in order from greatest
21 amount of authority to least amount of authority.

22 A Police officer, sergeant, lieutenant,
23 captain.

24 Q On a given day, if somebody holding the
25 rank of police officer had a question about how to

1 CRUZ

2 proceed with a particular activity, would they go to
3 the captain?

4 A No.

5 Q Would they go to the lieutenant?

6 A No.

7 Q Would they ask the sergeant?

8 A They would ask -- if they had a question,
9 the sergeant.

10 Q How much force are you allowed to use in
11 effectuating the arrest of an individual?

12 MR. FARRAR: Objection.

13 A The minimum amount.

14 Q Are there types of force that you are not
15 allowed to use?

16 MR. FARRAR: Objection.

17 A Chokehold. That's a -- that's a no-no.

18 Q Would you agree that only the amount of
19 force necessary to overcome resistance would be used
20 to effect an arrest?

21 MR. FARRAR: Objection.

22 A The minimum amount.

23 Q Do you have an obligation to stop the use
24 of excessive force if you observe such activity?

25 A Yes.

1 CRUZ

2 Q Does the patrol guide say anything about
3 the use of handcuffs?

4 MR. FARRAR: Objection.

5 A In what context?

6 Q In any context.

7 A When placing an individual under arrest,
8 yes, you have to place handcuffs on the individual.

9 Q Is there any written material that you
10 know of that explains how handcuffs are supposed to
11 be applied?

12 MR. FARRAR: Objection.

13 A No.

14 Q Are properly applied handcuffs supposed to
15 cause injury?

16 MR. FARRAR: Objection.

17 A Properly applied? No.

18 Q What is the proper way to apply handcuffs?

19 A The proper way is to place the hands
20 behind the individual as if he was praying, both
21 hands like this (indicating), palms facing each
22 other, and you then place the handcuffs. You also
23 want to lock the handcuffs and give them, you know,
24 space (indicating). That's pretty much it.

25 Q When you say place the individual's hands

1 CRUZ

2 behind him as if he is praying, do you mean so his
3 hands are pointing up or down?

4 A No. Pointing down. Palms facing each
5 other behind his back.

6 Q Is the application of handcuffs considered
7 the use of force?

8 MR. FARRAR: Objection.

9 A No.

10 Q Are officers trained to respond or take
11 action if a person complains that the handcuffs are
12 causing pain?

13 MR. FARRAR: Objection.

14 A Repeat the question again.

15 Q Sure.

16 MS. MASSIMI: Can you read it back?

17 (Requested testimony was read.)

18 MR. FARRAR: Objection.

19 A Every situation is different so -- but at
20 the appropriate time, reasonable time and -- yes.

21 Q What action is a member of the NYPD
22 supposed to take if a prisoner complains of
23 handcuffs being too tight?

24 MR. FARRAR: Objection.

25 A I'm sorry. Say it again.

1 CRUZ

2 MS. MASSIMI: Could you read that back?

3 (Requested testimony was read.)

4 A When?

5 Q No.

6 MS. MASSIMI: Could you just read that
7 back one more time?

8 A It varies. You could have a disorderly
9 group, a large group, and you need to remove the
10 individual. You know, there may not be time enough
11 to make that adjustment. Once he's placed in the
12 car and the seat belt put on, you may -- may loosen
13 up the handcuffs at that point to make him feel
14 comfortable, or back at the precinct once it's
15 controlled in a controlled environment, you're able
16 then to loosen up the handcuffs a little bit.

17 Q Have you ever observed handcuffs applied
18 too tightly?

19 MR. FARRAR: Objection.

20 A No.

21 Q Do handcuffs contain a mechanism that you
22 are supposed to activate to ensure that they do not
23 tighten further after application?

24 A Yes.

25 Q What is that mechanism called?

1 CRUZ

2 A It's like a -- a lock. It's just a simple
3 hole, and you put the key in and lock it in.

4 Q Are the handcuffs that members of the NYPD
5 carry required to contain that mechanism?

6 A Yeah. All the handcuffs have that.

7 Q You mentioned the term chokehold before,
8 so you are familiar with the term chokehold?

9 MR. FARRAR: Objection.

10 A Yes.

11 Q What is a chokehold?

12 MR. FARRAR: Objection.

13 A It's where you place your hands or your
14 forearm on the individual's neck obstructing his
15 breathing.

16 Q Is that a complete description of a
17 chokehold?

18 MR. FARRAR: Objection.

19 A To my knowledge, yes.

20 Q Are you aware of any official definition
21 of chokehold in any NYPD documents?

22 MR. FARRAR: Objection.

23 A No.

24 Q Are there circumstances under which a
25 chokehold is permitted?

1 CRUZ

2 MR. FARRAR: Objection.

3 A No.

4 Q Have you ever used a chokehold?

5 A No.

6 Q Do you have a duty to preserve evidence of
7 a crime?

8 A Yes.

9 Q Do you have a duty to preserve drugs which
10 you believe are in the possession of an arrestee?

11 A Yes.

12 Q On March 27, 2012, did you believe that
13 Mr. Alicea was in possession of drugs when he was
14 arrested?

15 MR. FARRAR: Objection.

16 A You would have to ask the officer that
17 observed.

18 Q Did you observe any other officer attempt
19 to take steps to recover these items from
20 Mr. Alicea?

21 MR. FARRAR: Objection.

22 A No.

23 Q What is the Conditions Unit?

24 A The Conditions Unit, it's a unit that we
25 address pretty much all quality of life issues. It

1 CRUZ

2 could vary from noise complaints to narcotic sales.

3 Q What are some other quality of life issues
4 that the Conditions Unit addresses?

5 MR. FARRAR: Objection.

6 A Like I said, it varies. It varies.

7 Q When you say that the Conditions Unit is
8 supposed to address all quality of life issues, what
9 does that entail?

10 MR. FARRAR: Objection.

11 A Any jobs that are generated through 911,
12 311, jobs that we get, complaints that we receive
13 during community board meetings.

14 Q Does the Conditions Unit ever address
15 situations that are not brought to your attention by
16 911, 311, or community board meetings?

17 A Say that again. I'm sorry.

18 Q Does the Conditions Unit ever address all
19 quality of life issues that are not brought to your
20 precinct's attention by 911, 311, or community board
21 meetings?

22 MR. FARRAR: Objection.

23 A All?

24 MS. MASSIMI: Can you just read that back?

25 (Requested testimony was read.)

1 CRUZ

2 A We also address things that we see out on
3 the street, so like peddler units, people selling
4 items out on the street without the proper licenses.

5 Q When you say that the Conditions Unit
6 addresses those situations, what do you mean by
7 address?

8 MR. FARRAR: Objection.

9 A We see if they are properly licensed. If
10 not, summonses are issued.

11 Q Are you a member of the Conditions Unit?

12 A Yes.

13 Q Do you supervise officers who are assigned
14 to the Conditions Unit?

15 A Yes.

16 Q What are the duties and functions of
17 members of the Conditions Unit?

18 MR. FARRAR: Objection. Asked and
19 answered.

20 Q Have you told me everything about the
21 duties and functions of members of the Conditions
22 Unit?

23 MR. FARRAR: Objection.

24 A Yes.

25 Q Do members of the Conditions Unit receive

1 CRUZ

2 training to join that unit?

3 A No.

4 Q How does someone become a member of the
5 Conditions Unit?

6 A They apply for the position, and they're
7 then picked when the proper time comes. They are
8 selected.

9 Q Did you apply to become a member of the
10 Conditions Unit?

11 A No.

12 Q Were you selected to become a member of
13 the Conditions Unit?

14 A Yeah. Yes.

15 Q Do you know why you were assigned to that
16 unit?

17 A No.

18 Q Were you a supervisor of the Conditions
19 Unit on March 27, 2012?

20 A Yes.

21 Q How does the Conditions Unit operate?

22 MR. FARRAR: Objection.

23 A What do you mean operate?

24 Q Just explain to me how it functions.

25 MR. FARRAR: Objection.

1 CRUZ

2 A As I mentioned before, we -- we address,
3 you know, certain quality of life issues.
4 Complaints.

5 Q How does the Conditions Unit locate crime?

6 MR. FARRAR: Objection.

7 A We get these complaints, as I said before,
8 911, 311, community board meetings that we attend
9 to, we receive complaints from community board
10 members.

11 Q Are there other ways that the Conditions
12 Unit locates crime?

13 MR. FARRAR: Objection.

14 A As they're observing -- you know, when
15 they're driving in the street, yes.

16 Q Is there an observation detail of the
17 Conditions Unit?

18 A No.

19 Q Are there members of the Conditions Unit
20 who are assigned solely to make observations?

21 A I'm sorry. Say that again.

22 Q Are there members of the Conditions Unit
23 who are assigned solely to make observations?

24 A No.

25 Q Is there any reason why a member of the

1 CRUZ

2 Conditions Unit would observe a crime but not make
3 the arrest themselves?

4 MR. FARRAR: Objection.

5 A I can't say. I can't answer that.

6 Q Are certain members of the Conditions Unit
7 undercover?

8 A No.

9 Q Is every member of the NYPD in your
10 precinct assigned to a particular unit?

11 MR. FARRAR: Objection.

12 A I'm sorry?

13 Q Is every member of the NYPD in the 33rd
14 Precinct assigned to a particular unit?

15 MR. FARRAR: Objection.

16 A No.

17 Q What are some of the other units that you
18 are aware of in your precinct, other than the
19 Conditions Unit?

20 A We have patrol. We also have -- it's a
21 large, you know, precinct. We have Domestic
22 Violence Unit. What else do we have? We have
23 anti-crime.

24 Q Are members of the Anti-crime Unit
25 undercover?

1 CRUZ

2 MR. FARRAR: Objection.

3 A They operate plainclothes.

4 Q Do any members of the Conditions Unit
5 operate in plainclothes?

6 MR. FARRAR: Objection.

7 A It varies.

8 Q On March 27, 2012, were there members of
9 the Conditions Unit operating in plainclothes?

10 A No.

11 Q For what purpose would a member of the
12 Conditions Unit be operating in plainclothes?

13 MR. FARRAR: Objection.

14 A Again, it varies.

15 Q Do you know if Officer Baboolal was in
16 plainclothes on March 27, 2012?

17 A You would have to ask him.

18 Q Do you have any independent recollection
19 of whether or not he was?

20 A No.

21 Q You have listed three additional units,
22 other than the Conditions Unit. You have listed the
23 Patrol Unit, Domestic Violence Unit, and Anti-crime
24 Unit. Are those all the units that you can
25 currently recollect?

1 CRUZ

2 MR. FARRAR: Objection.

3 A Yeah. Yes.

4 Q Do those units ever work together?

5 MR. FARRAR: Objection.

6 A No.

7 Q How do members of the Conditions Unit get
8 assigned to go out on patrol?

9 A Patrol?

10 Q Do members of the Conditions Unit ever
11 patrol your precinct, patrol the 33rd Precinct?

12 A Yes.

13 Q How do they get assigned to do that?

14 A If the patrol -- if the patrol unit is
15 shorthanded, then members of the Conditions Unit are
16 then, you know, chosen to -- to -- to, you know,
17 perform patrol duties.

18 Q Do members of the Conditions Unit ever
19 perform patrols as part of their duties with the
20 Conditions Unit?

21 A Yeah, yes.

22 Q When on patrol, is there an individual who
23 is the designated recorder for a particular vehicle?

24 A The recorder? Yeah -- yes.

25 Q Where does the recorder usually sit in the

1 CRUZ

2 vehicle?

3 A Passenger.

4 Q What are the duties and functions of the
5 recorder?

6 A Record all activities, radio runs, arrest
7 situations, car stops.

8 Q Where does the recorder record this
9 information?

10 A In his memo book.

11 Q Is he required to record this information
12 anywhere else?

13 MR. FARRAR: Objection.

14 A No, that's -- no.

15 Q Is he assigned at the beginning of his
16 shift to be the recorder?

17 A That's -- that's -- that's decided among
18 both individuals that are doing patrol.

19 Q Are they required to inform anyone
20 regarding who is going to be the recorder and who is
21 going to operate the vehicle?

22 A No.

23 Q Are they required to make a notation in
24 their memo book about whether or not they were the
25 recorder?

1 CRUZ

2 A Yes.

3 Q What would the notation say?

4 MR. FARRAR: Objection.

5 A The notation would say operator or
6 recorder.

7 Q By operator, do you mean the designated
8 driver?

9 A Right, yes.

10 Q Okay.

11 A But that varies throughout the day.

12 Q What do you mean?

13 A It, you know -- you may have situations
14 where the officer then -- one of the officers made
15 an arrest, so that car would be taken out of service
16 or there may be a switch of personnel, so it's not
17 constantly constant. It changes throughout the day.

18 Q Is there a reason why an individual and
19 his partner might be assigned to patrol an area with
20 a third individual in their vehicle?

21 A No.

22 Q Does that ever happen?

23 A Yeah.

24 Q What is the maximum number of officers
25 that can patrol in one car? I am not talking about

1 CRUZ

2 a van; I am just talking about a regular patrol
3 vehicle. What is the maximum number of officers
4 that can patrol in that vehicle at one time?

5 A It varies. It varies.

6 Q More than three?

7 A It could be three; it could be four.

8 Q Is there a reason why there would be three
9 people patrolling in one vehicle?

10 A There would probably be no cars available.

11 Q Is there a reason why there would be four
12 people patrolling in one vehicle?

13 MR. FARRAR: Objection.

14 A No.

15 Q Are there members of the Conditions Unit
16 that drive unmarked police cars ever?

17 A Occasionally we drive -- we operate
18 unmarked vehicles.

19 Q What is the purpose of operating an
20 unmarked vehicle?

21 A Again, we may not have the cars available,
22 marked cars available.

23 Q Are there members of the Conditions Unit
24 who on occasion will wear a uniform but also drive
25 an unmarked vehicle?

1 CRUZ

2 A Uniform in an unmarked?

3 Q Yes.

4 A Yes.

5 Q What is the purpose of that?

6 MR. FARRAR: Objection.

7 A Again, we may not have available cars.

8 Q Is there ever an occasion where a member
9 of the Conditions Unit will wear plainclothes but
10 drive a marked vehicle?

11 A I'm sorry. Say that again.

12 MS. MASSIMI: Can you just read that back?

13 (Requested testimony was read.)

14 A No.

15 Q Does every command have a Conditions Unit?

16 MR. FARRAR: Objection.

17 A I can't say.

18 Q What are the expectations of members of
19 the Conditions Unit?

20 MR. FARRAR: Objection.

21 A The objection?

22 Q The expectations of somebody who is
23 assigned to the Conditions Unit, what are they
24 expected to do?

25 A Once again, addressing quality of life

1 CRUZ

2 issues.

3 Q Can you work as a member of more than one
4 unit at a time?

5 A I don't understand.

6 Q If you are assigned to the Conditions
7 Unit, can you also on occasion work with other
8 units?

9 A Yeah.

10 Q How many arrests per year are members of
11 the Conditions Unit required to make?

12 MR. FARRAR: Objection.

13 A There's no requirement.

14 Q Did you ever ask Officer Baboolal why he
15 did not arrest Edmin Alicea after observing what he
16 told you was a hand-to-hand transaction?

17 A Can you say that again?

18 Q Did you ever ask Officer Baboolal why he
19 did not personally arrest Edmin Alicea after
20 observing what he claimed was a hand-to-hand drug
21 transaction?

22 A You would have to ask him.

23 Q I am asking you if you could think of any
24 reason why he would have observed what he said was
25 criminal activity but not made the arrest himself?

1 CRUZ

2 I am just generally asking if there is ever a
3 situation where an officer who is in plainclothes
4 might observe what he claims was criminal activity
5 but then ask another officer to do the arrest?

6 MR. FARRAR: Objection.

7 A No. You would have to ask him.

8 Q I am asking you if you ever heard of a
9 scenario like that?

10 MR. FARRAR: Objection.

11 A No, I'm -- no.

12 Q Does the Conditions Unit ever perform
13 operations with one officer serving as the
14 observation point?

15 A Yes.

16 Q Can you explain to me how that observation
17 point is supposed to function?

18 MR. FARRAR: Objection.

19 A The observation point, his job -- his only
20 job was to observe the activity that occurred, and
21 from his observation, if there was a crime
22 committed, he would transmit that -- that activity
23 to -- to the -- to the catch car or chase car.

24 Q Is that person referred to as the
25 observation point?

1 CRUZ

2 A Right.

3 Q And the catch car is the officer who makes
4 the apprehension?

5 A Yes.

6 Q When the observation point observes what
7 he claims is criminal activity and then transmits
8 that information to the catch car, how does he
9 transmit that information?

10 MR. FARRAR: Objection.

11 A You would have to ask the observing
12 officer.

13 Q Well, I am asking in general, how would an
14 observation point communicate with another vehicle?

15 A Generally, point to point.

16 Q Is that communication recorded?

17 A No.

18 Q Do you know why it's not recorded?

19 A No.

20 Q The point to point, is that communication
21 that is done on regularly issued radios?

22 A Yes.

23 Q The officers are not required to sign out
24 those radios before taking them?

25 A Each officer has a radio assigned to them.

1 CRUZ

2 Q That is what they would use for the point
3 to point?

4 A Yes.

5 Q The observation point, are they always in
6 plainclothes?

7 MR. FARRAR: Objection.

8 A I can't say. Most of the time they would
9 be in uniform.

10 Q If the observation point is in
11 plainclothes, is the idea that they are trying to go
12 undetected as an officer?

13 A Well, that would be the idea, yes.

14 Q They would be undercover?

15 MR. FARRAR: Objection.

16 A Plainclothes.

17 Q Just going back to March 27, 2012, were
18 you on duty that day?

19 A Yes.

20 Q What shift were you working?

21 A I started at 8:00 in the morning.

22 Q When was your shift expected to end?

23 A 4:57 in the afternoon.

24 Q Why 4:57?

25 A That totals up eight hours and 57 minutes.

1 CRUZ

2 Q I am just curious, it was scheduled to end
3 at 4:57?

4 A My tour?

5 Q Yes.

6 A Yes.

7 Q Not 5:00 p.m.?

8 A No. Sergeants are -- their tours are
9 eight hours and 57 minutes.

10 Q Is there a reason?

11 A (No verbal response given.)

12 Q What did you understand your
13 responsibilities to be during that tour on March 27,
14 2012?

15 MR. FARRAR: Objection.

16 A Can you repeat the question again?

17 MS. MASSIMI: Can you just read that back?

18 (Requested testimony was read.)

19 A Supervise my Conditions Unit.

20 Q Did you have any specific duties during
21 that shift?

22 MR. FARRAR: Objection.

23 MS. MASSIMI: I can rephrase it.

24 Q When you say that your responsibilities
25 were to supervise your Conditions Unit, just

1 CRUZ

2 elaborate on that for me. Specifically, what were
3 your duties during that day?

4 MR. FARRAR: Objection.

5 Q On March 27, 2012?

6 A That day I -- I had a court case. I went
7 down to court. Once I was finished with my court
8 case, I came back to the precinct. Once I came back
9 to the precinct, we -- I looked at some of the
10 places we had been receiving complaints about
11 regarding narcotics activity, and at that point, I
12 gathered up my Conditions Unit and instructed them
13 that we were going to look into that location.

14 Q Just tell me everything that you did that
15 day. Go on.

16 MR. FARRAR: Objection.

17 Q On your shift on March 27, 2012.

18 A What I just said. I went to court.

19 Q Yes?

20 A After court, I came back to the precinct.

21 Q Yes?

22 A Once I was back at the precinct, we
23 decided to -- to address the narcotic conditions at
24 that location.

25 Q At what location?

1 CRUZ

2 A What was that? 172 between Audubon and
3 Saint Nicholas.

4 Q Then what else did you do for the rest of
5 your shift that day? Just tell me everything in
6 chronological order that you did that day.

7 MR. FARRAR: Objection.

8 A That was it. The officers were -- went
9 out on the field, and I stayed at the precinct.

10 Q What did you do when you stayed at the
11 precinct?

12 A I can't say. I don't remember.

13 Q Do you remember anything that you did
14 after you sent the officers out?

15 A No, I can't say. It's --

16 Q What time did you send the officers out?

17 A I don't remember.

18 Q From that point on, you do not recall
19 anything else you did?

20 MR. FARRAR: Objection.

21 A No.

22 Q When you said you gathered up the
23 Conditions Unit, who did you gather up, to use your
24 words?

25 A Officer Baboolal, Officer Rivas, Officer

1 CRUZ

2 McGrawth, Officer Arrico. That I remember, yeah,
3 that's -- that's it.

4 Q Who was Officer McGrawth's partner on
5 March 27, 2012?

6 MR. FARRAR: Objection.

7 A I don't remember.

8 Q Who was Officer Baboolal's partner on
9 March 27, 2012?

10 MR. FARRAR: Objection.

11 A I don't remember.

12 Q Who was Rivas's partner on that day?

13 MR. FARRAR: Objection.

14 A I don't remember.

15 Q Who was Arrico's partner on that day?

16 MR. FARRAR: Objection.

17 A I don't remember.

18 Q Who were the other members of the
19 Conditions Unit on that day?

20 A Just the ones that I mentioned to you.

21 Q Those were the only four that were on duty
22 that day during your shift?

23 A Yeah, that I remember.

24 Q What did you tell them after you gathered
25 them up?

1 CRUZ

2 MR. FARRAR: Objection.

3 A That we were addressing the narcotic
4 conditions at 172 between Audubon and Saint
5 Nicholas.

6 Q How did you decide to address conditions
7 in that area that day?

8 A Once again, as I mentioned before,
9 complaints that I received from the community, 911
10 jobs, 311 jobs.

11 Q What do you mean? Do you mean just
12 citizens calling in to 911 and 311 giving
13 complaints?

14 A Right, right.

15 Q Who gives those complaints to you?

16 A Those -- those are generated through the
17 computer, and we get them. I also get phone calls.
18 Attending the meetings. There's a church nearby.

19 Q How many complaints do you have to receive
20 before you decide to send the Conditions Unit to a
21 particular area?

22 MR. FARRAR: Objection.

23 A No. There's no given amount of
24 complaints.

25 Q What circumstances have to exist in order

1 CRUZ

2 for you to make a determination that a particular
3 area is a drug-prone area?

4 MR. FARRAR: Objection.

5 A No. There is no criteria.

6 Q How do you decide that a particular area
7 is a drug-prone area?

8 A Well, if you receive the job after a
9 couple of 911 jobs indicating the same location or
10 maybe 311, people using the 311 system, you'll see
11 how many complaints that area has received, how many
12 phone calls.

13 Q You are saying that before you decided to
14 send a Conditions Unit to this area, 172nd Street
15 between Audubon and Saint Nicholas, you received 311
16 complaints, 911 complaints, and what other types of
17 complaints did you receive?

18 A Phone calls from the community.

19 Q In any of those 911 complaints, were there
20 any descriptions provided of any purported criminals
21 or perpetrators?

22 MR. FARRAR: Objection.

23 Q That you recall?

24 A No.

25 Q What about in any of the 311 complaints

1 CRUZ

2 that you received? Any physical descriptions
3 provided?

4 A No.

5 Q Did you take any phone calls regarding
6 that area on 172nd Street between Audubon and Saint
7 Nicholas that provided you with any physical
8 descriptions of any purported perpetrators?

9 A I've got phone calls but no description.
10 Just location.

11 Q When you sent the Conditions Unit out that
12 day, you were not looking for anyone in particular?

13 A No.

14 Q When you advised Baboolal, Rivas,
15 McGrawth, and Arrico on that day, who did you assign
16 to be the observation point?

17 A Officer Baboolal.

18 Q Had Officer Baboolal arrived for duty that
19 day in uniform or in plainclothes?

20 MR. FARRAR: Objection.

21 A If he arrived?

22 Q Did he show up for work that day wearing
23 his uniform or plainclothes?

24 A No, I can't -- I can't say if he was in
25 uniform.

1 CRUZ

2 Q Why did you select Officer Baboolal to be
3 the observation point?

4 A No particular reason. No particular
5 reason.

6 Q Did he maybe say I will be the observation
7 point?

8 A No. No particular reason. Everybody
9 has -- everybody takes a turn whenever we do some
10 sort of operation like that.

11 Q Did you assign Rivas, McGrawth, and Arrico
12 to be the catch car?

13 A Yes.

14 Q Did you assign anyone in particular to be
15 the driver?

16 A No.

17 Q Did you assign anyone in particular to be
18 the recorder?

19 A No.

20 Q Did they ever tell you who had decided to
21 be the recorder versus the driver?

22 A No.

23 MS. MASSIMI: Can you just give me one
24 second?

25 (A recess was taken from 1:21 to 1:25.)

1 CRUZ

2 (Requested testimony was read.)

3 Q Did you brief anyone else at the beginning
4 of your shift?

5 A What do you mean brief?

6 Q How would you describe the information
7 that you provided to the four members of the
8 Conditions Unit?

9 A How would I provide it?

10 Q How would you describe the information
11 that you gave to them?

12 A Simply we would get together and describe
13 what we're about to do. That's pretty much it.

14 Q Had you ever ordered the Conditions Unit
15 to patrol the area of 172nd Street between Audubon
16 and Saint Nicholas previously, previous to March 27,
17 2012?

18 A Whenever we're patrolling, we always --
19 always drive by.

20 Q Can you describe that area for me?

21 A Yeah. It's a -- residential buildings, a
22 couple of businesses, a church nearby on the corner
23 of Audubon and 172.

24 Q Does the recorder or the driver make
25 arrests?

1 CRUZ

2 MR. FARRAR: Objection.

3 A They're both allowed to make arrests.

4 Q Between the two of them, who would be
5 assigned as the arresting officer?

6 MR. FARRAR: Objection.

7 A That varies. I can't say.

8 Q Why is somebody designated as the
9 arresting officer?

10 MR. FARRAR: Objection.

11 A Again, it varies.

12 Q Just explain to me how you determined
13 whether or not somebody is going to be the arresting
14 officer for a particular arrest?

15 A Well, if the -- if the officer observed a
16 crime or if the officer observed, you know, the
17 destruction of evidence, the officer who apprehended
18 the individual, it varies. The officer who observed
19 it.

20 Q Did any of the officers from your command
21 call you from an arrest location during your shift
22 that day?

23 A Yes.

24 Q Who was that?

25 A Officer Rivas.

1 CRUZ

2 Q Anyone else?

3 A Again, I spoke with Officer Baboolal.

4 Q Where was Officer Baboolal during that
5 conversation?

6 A He was still at the -- at his observation
7 post.

8 Q What did he tell you during that
9 conversation?

10 MR. FARRAR: Objection.

11 A You have to ask him.

12 Q I am just asking what you recall him
13 telling you.

14 A He had described to me what he saw in
15 regards to the defendant, and as I mentioned before,
16 I asked him did you see him making a purchase? He
17 said yes.

18 Q Did he call you before you spoke to
19 Officer Rivas?

20 A No. He -- I called him.

21 Q You spoke to Officer Rivas first?

22 A No, no -- yeah, I spoke with Officer Rivas
23 first, and then I spoke with Officer Baboolal.

24 Q Officer Rivas called you?

25 A Yes.

1 CRUZ

2 Q On his radio?

3 A I can't -- I don't remember.

4 Q Do you remember how you called Officer
5 Baboolal?

6 A No. No, I don't know if it was department
7 phone, my phone. I don't remember.

8 Q How long after you spoke to Officer Rivas
9 did you speak to Officer Baboolal?

10 A A short time. As soon as Officer Rivas
11 came with the defendant to the precinct.

12 Q Officer Rivas was already back at the
13 precinct when you spoke to Officer Baboolal?

14 A Yes.

15 Q Did there come a point when Officer
16 Baboolal arrived back at the precinct that day?

17 A Yeah. Later on in the afternoon.

18 Q At what time?

19 A I don't remember.

20 Q Why did he come back to the precinct?

21 MR. FARRAR: Objection.

22 A I can't say. I mean, I don't know if he
23 was an arresting officer or if he had another arrest
24 himself or it was the end of tour.

25 Q When you called Officer Baboolal that day

1 CRUZ

2 at his observation point, did you reach him the
3 first time you attempted to reach him?

4 A Yeah, yes.

5 Q Was he surprised to hear from you?

6 MR. FARRAR: Objection.

7 A I can't say. You would have to ask him.

8 Q Did he seem surprised to hear from you?

9 A I can't say.

10 Q When did you first observe Edmin Alicea on
11 March 27, 2012?

12 A When he was brought into the precinct.

13 Q Can you describe his physical appearance,
14 please?

15 MR. FARRAR: Objection.

16 A Normal.

17 Q What was he wearing?

18 A I can't remember.

19 Q Do you recall what color his shirt was?

20 A No.

21 Q Do you recall what kind of shirt he was
22 wearing?

23 A No.

24 Q Do you recall if he had anything on his
25 face?

1 CRUZ

2 A No.

3 Q Do you recall if he had a dirty shirt?

4 A No.

5 Q Do you recall if he had any spots on his
6 shirt?

7 A No.

8 Q Had you ever heard about Edmin Alicea
9 before?

10 A No.

11 Q Had you ever seen Edmin Alicea before?

12 A No.

13 Q When you saw Edmin Alicea on that day, he
14 was a complete stranger to you?

15 A Yes.

16 Q Who was desk sergeant on that day when
17 Mr. Alicea was brought to the precinct?

18 A I don't remember.

19 Q If you wanted to find out who that was,
20 what documents would you reference?

21 MR. FARRAR: Objection.

22 Q How would you find out the name of the
23 desk sergeant on that day at that time?

24 A From the roll call.

25 Q What information is contained in the roll

1 CRUZ

2 call?

3 MR. FARRAR: Objection.

4 A Just the assignment of all the personnel
5 in the precinct.

6 Q Sorry. Say that again.

7 A Assignments of all personnel in the
8 precinct.

9 Q It has their assignments for that day?

10 A Yeah. But that also varies because he may
11 never know. If the desk officer was there for only
12 two, three hours, maybe he had to attend to other
13 matters.

14 Q If he has to be relieved of his duty as
15 the desk officer, will there be a notation made in
16 the roll call regarding who takes over for him?

17 MR. FARRAR: Objection.

18 A No.

19 Q Where is the roll call maintained?

20 MR. FARRAR: Objection.

21 A In the Roll Call Office.

22 Q In the what?

23 A Roll call. It's called Roll Call Office.

24 Q Is that at the precinct?

25 A Yeah.

1 CRUZ

2 Q Is the roll call a document?

3 A Yes.

4 Q Is it maintained digitally or hard copy?

5 MR. FARRAR: Objection.

6 A A hard copy.

7 Q Copies of it are kept in the Roll Call
8 Office?

9 A In the record room.

10 Q Who is responsible for maintaining the
11 roll calls that are kept in the record room?

12 MR. FARRAR: Objection.

13 A Roll call personnel.

14 Q Are those members of service?

15 A No. Civilians.

16 Q What time approximately was it when you
17 first observed Mr. Alicea on March 27, 2012?

18 A I don't remember that.

19 Q Where were you when you first observed
20 him?

21 A Inside the precinct.

22 Q Where inside the precinct?

23 A By the desk.

24 Q Which desk?

25 A What can I say? The -- we call it the

1 CRUZ

2 desk where the -- the desk officer sits.

3 Q The desk sergeant?

4 A The desk sergeant, yeah.

5 Q Were you standing there with the desk
6 sergeant?

7 A I don't remember. I was in the area.

8 Q Which door did Mr. Alicea enter through?

9 A I don't remember that.

10 Q Does the desk face a particular door?

11 A No. The desk faces the lodging area, the
12 holding cells.

13 Q How many entrances are there to the
14 building where you are --

15 A Entrance to the building?

16 Q How many entrances are there to that
17 building where you work?

18 A There's a front entrance and a back
19 entrance.

20 Q Those are the only two entrances?

21 A Yeah.

22 Q Did you actually see Mr. Alicea being
23 brought through one of those entrances?

24 A No. I just remember him being inside the
25 precinct.

1 CRUZ

2 Q Where inside the precinct?

3 A In front of the desk.

4 Q That is your first recollection of him?

5 A Yeah.

6 Q Who was he standing with, if anyone?

7 A Officer Rivas.

8 Q Did you see anyone else standing with him?

9 A No. I don't remember, no.

10 Q Did you observe Officer Rivas bring in any
11 other prisoners at that time?

12 A No. I don't remember.

13 Q To your knowledge, had Officer Rivas made
14 any other arrests between arresting Mr. Alicea and
15 arriving at the precinct?

16 A No. I don't remember.

17 Q While in custody, did you observe
18 Mr. Alicea do anything that you believed gave rise
19 to probable cause to detain him?

20 A No.

21 Q After you observed Mr. Alicea standing in
22 front of the desk sergeant's desk, what was the next
23 observation that you had of him?

24 A Walking him to the holding cells.

25 Q Who walked him to the holding cell?

1 CRUZ

2 A Officer Rivas.

3 Q Between the time that you observed him
4 standing in front of the desk sergeant's desk up
5 until you observed Officer Rivas walking him to the
6 cell, was he under your constant observation?

7 A Yes.

8 Q How much time passed between those two
9 events?

10 A A short amount of time. I can't say, but
11 it was short.

12 Q Did you have any conversations with
13 Mr. Alicea when he was standing at the desk
14 sergeant's desk?

15 A No. When I saw him, he was placed in the
16 cell.

17 Q We will get to that, but when he was first
18 standing at the desk, did you have any conversations
19 with him?

20 A No.

21 Q Did he say anything to you?

22 A No.

23 Q Did you hear him say anything to anyone
24 else?

25 A No.

1 CRUZ

2 Q Did Officer Rivas say anything to him?

3 A No. I don't remember.

4 Q Did you observe whether he was in any
5 physical distress?

6 A He was in no physical distress, none
7 whatsoever.

8 Q How do you know that?

9 MR. FARRAR: Objection.

10 A He was speaking. He was breathing well.
11 Once you're in front of the desk, you have to give
12 your name, your pedigree information. He was
13 speaking very clear.

14 Q Did you perform a physical examination of
15 Mr. Alicea?

16 A No.

17 MR. FARRAR: Objection.

18 Q Did you instruct anyone to perform a
19 physical examination of Mr. Alicea?

20 MR. FARRAR: Objection.

21 A No.

22 Q Do you know if Mr. Alicea had fractured
23 any bones at that point?

24 A No.

25 Q Do you know if Mr. Alicea had any medical

1 CRUZ

2 conditions at that time?

3 A No.

4 Q After you observed Officer Rivas walking
5 Mr. Alicea into the holding cell, what was the next
6 observation that you had of Mr. Alicea?

7 A That he was normal. There was nothing
8 unusual about him.

9 Q When did you next lose or take your eyes
10 off of Mr. Alicea?

11 MR. FARRAR: Objection.

12 A After I spoke with him.

13 Q When do you have a conversation with him
14 at first?

15 A In the holding cell area.

16 Q Was he already in the cell?

17 A I -- I don't remember. I remember asking
18 him, you know, if he -- why did you do it, eating
19 it? And I also asked him are you okay? Are you
20 having any problem breathing? Do you want to go to
21 the hospital? And he said no, I don't want to go to
22 the hospital.

23 Q What was his response to each of those
24 other questions that you just told me about?

25 MR. FARRAR: Objection.

1 CRUZ

2 A No. He just answered no. He was -- he
3 was normal, but you know, he wasn't saying much, but
4 when I asked him in detail why he ate it, he stood
5 quiet.

6 Q When you asked him why he ate it, what
7 were you referring to?

8 A The marijuana, the bag of marijuana.

9 Q Did Officer Rivas describe the bag to you?

10 A Yes. He -- yes.

11 Q What description did he provide?

12 A Just one bag of marijuana. One bag
13 containing marijuana.

14 Q Did he describe the bag to you?

15 A Just one small bag of marijuana.

16 Q He did not tell you what type of bag it
17 was?

18 MR. FARRAR: Objection.

19 A No.

20 Q After that conversation that you had with
21 Mr. Alicea, what did you do next?

22 A I walked away.

23 Q Did you fill out any forms memorializing
24 that conversation that you had just described to me?

25 A No.

1 CRUZ

2 Q Do you know if Officer Rivas had the same
3 or similar type of conversation with Mr. Alicea?

4 A I can't say.

5 Q Do you know if he filled out any forms
6 with regard to that information that you just told
7 me about?

8 A No. I can't say.

9 Q Did you instruct anyone to memorialize the
10 conversation that you just described to me?

11 A No.

12 Q Did anyone call for backup regarding the
13 arrest that was made of Mr. Alicea on 172nd Street?

14 A I can't say that.

15 Q Did anyone notify you that backup was
16 needed?

17 A No.

18 Q To your knowledge, how many members of the
19 NYPD were involved in the arrest and apprehension of
20 Mr. Alicea on March 27, 2012?

21 MR. FARRAR: Objection.

22 A Just Officer Rivas.

23 Q No one else?

24 A No. I was at the precinct. I saw Officer
25 Rivas with the -- with the defendant.

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Q We are just about done. Have you now told me everything that you remember about the arrest of Mr. Alicea?

MR. FARRAR: Objection.

Q On March 27, 2012?

A Yes.

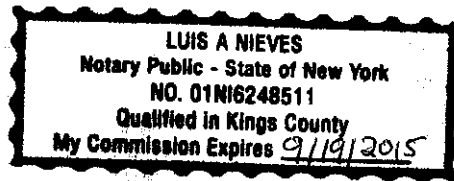
MS. MASSIMI: Okay. Thank you.

(Whereupon, the proceedings were concluded at 2:47 p.m.)

St. Cruz, Fredy
Sergeant Fredy Cruz

Subscribed and sworn to before me
this 5 day of November 2014.

Luis A. Nieves
NOTARY PUBLIC



C E R T I F I C A T E

STATE OF NEW YORK)

COUNTY OF QUEENS)

I, JOSEPH ADLER, a stenotype reporter and
Notary Public within and for the State of New York,
do hereby certify that:

SERGEANT FREDY CRUZ

The witness whose Examination Before Trial
is hereinbefore set forth, was first duly sworn by
me, and that such Examination Before Trial is a true
and accurate record of the testimony given by said
witness; and I further certify that I am not related
to any of the parties of this action by blood or
marriage and that I am in no way interested in the
outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my
hand this 19th day of September, 2014.



JOSEPH ADLER

Errata Sheet

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Page	Line No.	Name of Witness	From	To
8	23	Fredy Cruz	'FREDY'	WAS.
8	24	Fredy Cruz	'FREDY'	SELF
31	4	Fredy Cruz	OMIT OF 'BACK AT THE PRECINCT'	
48	13	Fredy Cruz	SUPER	SUPERKILLER -
68	24-25	Fredy Cruz	OMIT 'YOU KNOW IT'S PRETTY MUCH'	
135	14	Fredy Cruz	TO LET THEM KNOW, YOU KNOW	
135	14	Fredy Cruz	OMIT 'THAT'	

St. Cruz, Fredy.

Luís A. Nieves

